IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO 3462 OF 1998

Tata Memorial Centre,
a registered Society registered
under the Societies Registration Act,
having its office at
Dr. Ernest Broges Marg, Parel,
Mumbai 400 012.

....Plaintiff.

Vs.

1. Mr. Loladhar Kunder,
   Editor, Metro Beat Newspaper,
   having its office at 25/C,
   Maruti Mali Chawl, D.P.Wadi,
   Ghodapdev, Mumbai 400 033.

2. Mr. Muralee Dharan,
   City Editor,
   Metro Beat Newspaper,
   having its office at 25/C,
   Maruti Mali Chawl, D.P.Wadi.
   Ghodapdev, Mumbai-400 033.

3. Mr.Arvind Murlidhar Shingote,
   Printer & Publisher,
   Metro Beat Newspaper,
   having its office at 25/C,
   Maruti Mali Chawl, D.P. Wadi,
   Ghodapdedv, Mumbai 400 033.

4. Mr. Murlidhar Shingote,
   Founder, Metro Beat Newspaper,
   having its office at 25/C,
   Maruti Mali Chawl, D.P.Wadi,
   Ghodapdev, Mumbai 400 033.

....Defendants.

Mr. Snehal Shah with S.V. Uttam i/by M/s. Mulla & Mulla for the Plaintiff.

CORAM: A.S. OKA, J.
DATE : SEPTEMBER 4, 2007

ORAL JUDGMENT

1. The suit has been listed under the caption of "Undefended Suit for Exparte Decree". The prayer in the suit is for a decree directing the defendants to pay to the plaintiff a sum of Rs.10/- Crores as per the particulars of claim annexed as Exh.C to the plaint as and by way of damages and loss caused to them due to publication of a defamatory article on 9th March,1998 in a newspaper "Metro Beat" by the defendants. The second prayer is for a decree directing the defendants to publish an apology and the third prayer is for restraining the defendants from republishing the defamatory article.

2. The plaintiff has filed an affidavit of evidence of Mr. K. Subramanian-Human Resource Development Officer of the plaintiff. The said affidavit is taken on record and marked "X" for identification. Along with the compilation, the plaintiff has tendered six documents. The compilation is marked Exh. "Y" (Collectively) for identification.

3. The plaintiff is a society registered under the Societies Registration Act,1960. The plaintiff is running Tata Memorial Hospital which was established in 1941. The plaintiff is also running a Cancer Research

Institute which was established in 1950. According to the case of the plaintiff, the Hospital and Cancer Research Centre are under the Control of the Department of Atomic Energy, Government of India. The plaintiff is engaged in research, post graduate training, education and the comprehensive treatment and care of patients suffering from Cancer and allied diseases.

4. The case made out in the plaint is that the first defendant is the editor of the newspaper Metro Beat and the second defendant is the City Editor of the Mumbai City edition of the said newspaper. The third defendant is the printer and publisher of the newspaper and the fourth defendant is the founder of the said newspaper.

5. The case of the plaintiff is that an article published on 9th March, 1998 in the issue of "Metro Beat" contains number of defamatory statements. It is stated that even the title of the news item alleges that Tata Memorial Cancer Hospital at Parel has once again come into the limelight because of the alleged malpractices and corruption at highest level. The allegations are made that the Management of the hospital is misusing yearly grant of Rs.35/- lacs issued by the Central Government. It is alleged that the beds which were available in the hospital for poor and needy cancer patients are being charged. It is also alleged in the

article that various amounts have been charged by the hospital from high income patients. It is alleged that the Doctors on duty never bother to visit the general wards for routine check up. It records the grievance of an alleged patient that he was admitted in the hospital in the month of January,1998. The hospital authorities have not arranged for suggested operation. It is alleged that the Doctors in the said hospital are having their own clinics in the city or they are practicing in private hospitals. It is alleged that the Surgeons at Tata Hospital gets 40% commission on the treatment and operations till the union raised objection and thereafter Management started calling the commission as extra benefits. In fact, the said article records that an Enquiry Commission should be set up looking to the allegations against the hospital.

6. The contention of the plaintiff is that the allegations made by the defendants in the article are false, misleading and grossly defamatory and same have been made with malicious intention. It is stated that the said allegations have no relation with the truth. It is stated that the defamatory statements made in the newspaper are actionable per say and the defendants are liable for the same under the law.

7. The plaintiff has set out several facts in the suit

showing as to how the allegations in the news item are false. Reliance is placed on Notice dated 18th March,1998 given by the Advocate for the plaintiff to the defendants calling upon them to pay damages and to publish an apology. In fact, a draft of the apology was also enclosed with the said notice. As the defendants failed to reply to the said notice, present suit has been filed.

8. On perusal of the affidavit of evidence of Mr.K. Subramanian, it appears that the case made out in the plaint has been duly proved by the plaintiff. It is stated that the defamatory statements made by the defendants have caused wrongful loss and damage to the plaintiff. It is alleged that the said statements have been made with the full knowledge that the same are false and frivolous. In so far as allegations and the statements made in the news items are concerned, the same are proved by the said affidavit.

9. The learned counsel appearing for the plaintiff fairly invited my attention to apology published by the defendants on the issue of the said newspaper dated 20th December, 1998 i.e. during the pendency of the suit. In view of the publication of the said apology, the learned counsel for the plaintiff stated that in so far as claim for damages is concerned, the same may be

appropriately awarded considering the apology tendered by the defendants. I have perused the defamatory article published by the defendants. In view of the affidavit and in view of the documents placed on record, a case is made out for passing a decree in terms of prayer clause (c). In so far as prayer clause (b) is concerned, an apology has been already published. In so far as claim for damages is concerned, in view of the facts and circumstances, token amount of Rs.100l/- is fixed by way of damages.

9. Hence, suit is decree in terms of prayer clause (a) and (c) with modification that the amount of damages will be Rs.1001/-. The defendants shall pay proportionate costs of the suit to the plaintiff.

10. The plaintiff will be entitled to refund of court fee as per rules.

11. Certified copy is expedited.

(A.S. OKA, J.)